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NO. 16-CI-03503 JEFFERSON CIRCUIT COURT
DIVISION TEN (10)

DONNA ANN HAYES PLAINTIFF

VS. TRANSCRIPT OF PROCEEDINGS

JULY 23, 2019

COLGATE-PALMOLIVE COMPANY,
ET AL. DEFENDANTS

* * *

Heard before the Hon. Angela McCormick Bisig,
Judge, Jefferson Circuit Court, Division 3,
Louisville Justice Center, Louisville, Kentucky.

* * *

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1 at that time is that testing with those two
 2 methods was the industry standard for asbestos
 3 analysis at that time, and provided Scott's with a
 4 reasonable basis to believe that consumer use of
 5 their Libby vermiculite products did not cause any
 6 significant exposure, correct?

7 A. That's what I stated, yes.

8 Q. And you also said that any
 9 suggestion that some of these independent
 10 laboratories, or Scott's, should have had the
 11 knowledge or foresight to do further testing --
 12 and I'm skipping a few words to -- with ATEM after
 13 negative results with XRD and optical microscopy
 14 in the 1970s is not reasonable or scientifically
 15 valid, right?

16 A. That is absolutely correct, for
 17 Scott's --

18 Q. Okay.

19 A. -- Fertilizer Company.

20 Q. And you also pointed out one of the
 21 reasons why you thought -- now, they did not do --
 22 or did not have done for them TEM work, right?

23 A. That's correct.

24 Q. Okay. And I think you believe that
 25 TEM is the most sensitive method to look for

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1 And the second part of this is, the
 2 vermiculite from Libby, Montana, nobody is
 3 disputing that it has asbestos in it. We're not
 4 looking at, like, cosmetic talc. We know we were
 5 starting with an asbestos-containing material with
 6 accessory minerals, well understood, and we were
 7 looking at did their process reduce the amount of
 8 asbestos.

9 So I stick to everything I say in there.
 10 But you can't compare a fertilizer company to a
 11 giant pharmaceutical company and what they should
 12 have known or not known about using transmission
 13 electron microscopy. That is just not fair.

14 Q. Okay. But you do know, if we go to
 15 slide 54, you do know that Johnson & Johnson went
 16 beyond the J-41 standard and beyond what Scott's
 17 did and did have McCrone do TEM work for them?

18 A. Yes, sir. I know that -- well, I
 19 know that after I got involved in this when all
 20 the secret documents came out.

21 Q. Okay.

22 MR. DUBIN: Your Honor, move to strike
 23 the nonresponsive portion of that answer.

24 MR. SATTERLEY: I'll object to that.

25 THE COURT: I'll allow him to say it.

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1 asbestos in trace quantities, correct?

2 A. It is. I asked them why they did
 3 not -- they relied on their outside labs. And
 4 McCrone was their primary lab. McCrone didn't
 5 advise them to use TEM.

6 Q. Okay. Actually what you said is,
 7 "One of the problems in the 1970s was that there
 8 were very few, if any, ATEMs in commercial
 9 laboratories that had the appropriate technology
 10 to perform accurate trace amphibole contaminant
 11 analysis," right?

12 A. And that's true.

13 Q. And you said that in defending
 14 Scott's -- when you said that defending Scott's,
 15 did you know that McCrone had a TEM?

16 A. Yes. McCrone had a TEM and that's
 17 why I asked Ian Stewart, he was retired, why they
 18 never told Scott's to do TEM when they had a TEM.
 19 And Ian Stewart says, "Because there was nothing
 20 there. We didn't think it was necessary."

21 So you're asking a fertilizer company,
 22 depending on other -- other -- other consultants
 23 to be able to determine that. That's why I stated
 24 when they were using PLM and XRD, they were doing
 25 the appropriate analysis.

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1 You can further question him about it if you'd
 2 like.

3 Q. Sir, my question is a simple one,
 4 and I appreciate you responding to my questions
 5 that I'm asking you. Is that okay? Will you do
 6 that?

7 A. Yes, sir. I tried, when I get a
 8 question, I tried to explain it in full.

9 Q. Okay. Did Johnson & Johnson go
 10 beyond J4-1 and do -- have McCrone do TEM work for
 11 them?

12 A. I thought I said yes.

13 Q. Okay. Thank you.

14 And I think you've already mentioned that
 15 Scott's, the company that you were working for,
 16 the attorneys for Scott's, the lab that they used
 17 was McCrone, right?

18 A. Correct.

19 Q. The same McCrone?

20 A. Yes, sir.

21 Q. And in that context, you said when
 22 you were representing the defendant, that McCrone
 23 would have been a good choice in the 1970s for a
 24 company to go to to test a product like talc?

25 Actually you said that in this -- in this context.

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1 the time that you have had with the witnesses that
2 we've had thus far. I just want to say that
3 hasn't occurred.

4 MR. SATTERLEY: And I --

5 THE COURT: So you're saying if you
6 take 10 minutes and then I'm going to let them
7 take three or four hours, that's not going to
8 happen.

9 MR. SATTERLEY: I wasn't suggesting
10 that, Your Honor. What I'm suggesting is if we
11 start at 9:30 and I turn the witness over at 9:40
12 and they cross-examine till 11 and I still have a
13 treating doctor, my -- the decedent, 49 minutes,
14 and within that there's cross-examination within
15 that.

16 THE COURT: I understand.

17 MR. SATTERLEY: And the treating
18 doctor.

19 THE COURT: So if I give you till
20 2 o'clock, I've basically given you the time you
21 asked me for when we started this conversation.

22 MR. SATTERLEY: Assuming the
23 cross-examination is short. That's the assumption
24 that --

25 THE COURT: Right. But, again, you

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1 made decisions when Dr. Egilman was on the stand
2 to talk about a lot of things. And, again, that's
3 your decision.

4 MR. SATTERLEY: Okay.

5 THE COURT: I'm giving you basically
6 what you asked me for in terms of time. I will
7 not -- I can tell you I won't allow them to
8 cross-examine any witness double the time that
9 they're on or that will be accounted for. I will
10 allow them to build in there some
11 cross-examination. And I have differed from the
12 schedule somewhat.

13 MR. SATTERLEY: I understand.

14 THE COURT: Mostly in your -- in your
15 favor in terms of giving you more time and taking
16 time away from them.

17 MR. SATTERLEY: I understand, Your
18 Honor.

19 THE COURT: All right. I'll see
20 you-all in the morning.

21 *** *** ***

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1 STATE OF KENTUCKY
2 COUNTY OF JEFFERSON

3 I, NANCY L. NUNNELLEY, RMR, Notary Public,
4 State of Kentucky at Large, do hereby certify that
5 the foregoing deposition was taken at the time and
6 place stated in the caption; that the appearances
7 were as set forth in the caption; that prior to
8 giving their testimony the witness was first duly
9 sworn by me, that said testimony was taken down by me
10 in stenographic notes and thereafter reduced under my
11 supervision to the foregoing typewritten pages and
12 that said typewritten transcript is a true, accurate
13 and complete record of my stenographic notes so
14 taken.

15 I further certify that I am not related by
16 blood or marriage to any of the parties hereto and
17 that I have no interest in the outcome of captioned
18 case.

19 My commission as Notary Public expires July 10,
20 2023.

21 Given under my hand this the 24th day of
22 July, 2019, at Louisville, Kentucky.

23

24

25 NOTARY PUBLIC